

IN THE SENATE OF THE UNITED STATES.

JANUARY 26, 1860.

On motion by Mr. JOHNSON, of Arkansas,

Ordered, That the following papers be printed to accompany "bill (S. 19) legalizing certain entries of lands on Leavenworth island, in the State of Missouri."

GENERAL LAND OFFICE, *September 27, 1858.*

GENTLEMEN: I have to acknowledge the receipt of your letter of the 14th of May last, inclosing the petition and affidavit of Weeden Mushonn in relation to his application to preëempt the southeast fractional quarter of section 26, township 8, range 22 east, on *Leavenworth island*, in the Missouri river, at your office, and asking this office for certain instructions relating thereto for your future guidance. In reply I have to state that the affidavit of said Mushonn states, "that the island of which this claim is a part is separated from Kansas Territory by the whole channel of the Missouri river, and is in the county of Platte, in the State of Missouri, and there is but a *small slough* running around the Missouri side of the island in high water."

In arriving at a proper conclusion on this subject it will be necessary to look into the act of Congress of June 7, 1836, extending the western boundary line of the State of Missouri, and the act of Congress of May 30, 1854, organizing and establishing the boundaries of Nebraska and Kansas.

The act of June 7, 1836, provides, "That when the Indian title to all the lands lying between the State of Missouri and the Missouri river shall be extinguished, the jurisdiction over said lands shall be hereby ceded to the State of Missouri, and the *western boundary* of said State *shall then be extended to the Missouri river*," reserving to the United States the original right of soil in said lands and of disposing of the same.

The act of May 30, 1854, section 19, United States Statutes, volume 10, page 283, provides as follows:

"*And be it further enacted*, That all that part of the territory of the United States included within the following limits, except such portions thereof as are hereinafter expressly exempted from the operations of this act, to wit: beginning at a point on the western boundary of Missouri, where the 37th parallel of north latitude crosses the same; thence west, on said parallel, to the eastern boundary of New Mexico; thence north, on said boundary, to latitude 38°; thence, following said boundary westward, to the east boundary of the Territory of Utah, on

the summit of the Rocky mountains; thence northward, on said summit, to the 40th parallel of latitude; thence east, on said parallel, to the western boundary of the State of Missouri; *thence south, with the western boundary of said State, to the place of beginning*, be, and the same is hereby, created into a temporary government, by the name of the Territory of Kansas."

From the above, it will be perceived that the act of 1836 (called the Platte purchase) made the Missouri river the western boundary of Missouri, and which was fixed and established before the passage of the Kansas organic act of May 30, 1854, and must, therefore, govern and control the eastern boundary of Kansas, according to the provisions of said organic act. The principle laid down by jurists, in such cases, is that, "when a river is the boundary between two nations or States, if the original property is in *neither*, and there be no convention respecting it, *each holds* to the middle of the *main stream*; but when, in case one State is the original proprietor, and grants the territory on one side only, it retains the river within its *own* domain, and the newly-erected State extends to the river only, and low-water mark is its boundary."—(See Henly, lessee, *vs.* Anthony *et al.*, 5 Wheaton's U. S. Reports.)

The United States in this case was the owner of the domain, and when the boundary line was established from Missouri, it extended to the middle of the main channel of the Missouri river, and excluded all the islands contiguous or attached to the main shore of Missouri.

The evidence submitted by Mr. Mershonn clearly shows that this island lay adjacent to the Missouri shore, and that the main channel or body of water flowed between the *island* and Kansas Territory.

It is therefore the opinion of this office that the land on *Leavenworth island* is within the jurisdiction of the State of Missouri, and the government officers in Kansas have no jurisdiction over the same.

You will therefore permit no entry or settlement upon the lands in said section embraced in Leavenworth island.

The lands will only be subject to sale or preëmption at some one of the land offices in Missouri after the proper instructions are issued by this office in reference thereto.

Respectfully,

JOS. S. WILSON,
Acting Commissioner.

REGISTER AND RECEIVER,
Kickapoo, Kansas Territory.

GENERAL LAND OFFICE, *October 22, 1858.*

GENTLEMEN: I have to acknowledge the receipt of your letter of the 7th instant, requesting further information relative to preëmption settlers on *Leavenworth island*, in the Missouri river. In reply thereto I have to state, that in accordance with the decision contained in the letter of this office to the register and receiver at Kickapoo, Kansas

Territory, bearing date the 27th ultimo, settling the question of jurisdiction between the State of Missouri and Kansas Territory to said island, all preëmption entries permitted at the land office at Kickapoo, Kansas Territory, to lands on said island will be cancelled, the lands not being subject to preëmption or entry in the land offices in Kansas.

At an early period instructions will be sent out to the register and receiver at Kickapoo, Kansas Territory, calling for a full report to be furnished this office of all the lands embraced on said island, showing that which remains vacant and that which is claimed by preëmption, so that the lands entered by preëmption may be cancelled and the purchase money returned to the several parties interested.

The field notes and plats of survey of said island will be transmitted to the surveyor general of Missouri and Illinois for his approval, and when approved and certified to this office, proper instructions will be sent out to the proper land office in Missouri, (Plattsburg,) directing what course to be pursued in relation to the disposal of said lands on Leavenworth island.

These lands will then become subject to preëmption, and the parties will be required to make new settlements on the land, and new filings in the land office in Missouri, where they will be permitted to enter the same by preëmption, provided no superior right thereto has intervened.

Respectfully,

THOS. A. HENDRICKS,
Commissioner.

P. L. HUDGENS & SON,
Kickapoo, Kansas Territory.

GENERAL LAND OFFICE, *January 15, 1859.*

SIR: I have the honor to return herewith a letter, and copy of a bill accompanying the same, dated 11th instant, from Hon. W. R. W. Cobb, in reference to certain entries of lands situate on Leavenworth island, and to report that Leavenworth island was surveyed and platted by the surveyor general of Kansas and Nebraska as Kansas land, and the plats were returned to the local office at Kickapoo; that those persons for whose relief said bill is proposed, settled upon said island, and consummated their preëmption claims by entry at said Kickapoo land office. Afterwards, the question of jurisdiction over said island arose, and was presented to this office; and, after a thorough investigation, it was decided that of that decision, and the consequences thereof, I respectfully refer you to the inclosed copies of letters from this office: one of September 27, 1858, to the register and receiver at Kickapoo, the other to P. L. Hudgens & Son, dated October 22, 1858.

Very respectfully, your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

HON. JACOB THOMPSON,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, January 26, 1859.

SIR: I have the honor to acknowledge the receipt of your letter of the 11th instant, inclosing House bill No. 736, "for legalizing certain entries of lands situate on Leavenworth island, in the State of Missouri."

From the report of the Commissioner of the General Land Office of the 15th instant, copy of which is now inclosed, you will perceive that the bill would afford relief to parties who appear to be equitably entitled thereto, and the provisions of said bill are such as are approved by this department. It is returned to you herewith.

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

Hon. W. R. W. COBB,

Ch'm Com. Public Lands, House of Reps.